1-6040-15503-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF RICHFIELD HOUSING AND REDEVELOPMENT AUTHORITY

In the Matter of the Business Relocation Claims by Walser Buick/Isuzu and Motorwerks, Inc. (BMW)

ORDER

By a written Motion filed on September 22, 2003, the Richfield Housing and Redevelopment Authority (HRA) moved to exclude certain testimony and exhibits from the hearing in this matter. The Claimants, Walser Buick Isuzu and Motorwerks, Inc. (the "dealerships" or "claimants") filed a Memorandum of Law in opposition to the Motion on September 26, 2003. The Motion was the subject of oral argument at the Office of Administrative Hearings on September 30, 2003. Each party then filed a written reply on October 7, 2003.

Robert J.V. Vose, Esq. of the firm of Kennedy and Graven, Chartered, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, MN 55402, represents the HRA. Kirk A. Schnitker, Esq. and John W. Morphew, Esq. of the firm of Schnitker and Associates, P.A., 2300 Central Avenue NE, Minneapolis, MN 55418, represent the claimant dealerships.

Based upon all of the written submissions and the oral argument, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED THAT: The Motion in Limine is GRANTED in part and DENIED in part:

1. Documentation or other evidence in support of claims previously filed are admissible even though not filed contemporaneously with the claims.

2. Evidence of new claims is not admissible at the hearing.

Dated this 9th day of October 2003.

/s/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

**MEMORANDUM**

In August of 2000 the HRA initiated proceedings to condemn approximately seven acres of land at I-494 and Penn Avenue in Richfield. The land was owned by the

Walser family. The property was occupied and leased to two automobile dealerships namely Walser Buick/Isuzu and Motorwerks BMW. The dealerships are owned by the Walser family. After litigation the HRA acquired title to the property on February 13, 2001. However, the final negotiated settlement between the HRA and the Walser family in the condemnation action was not reached until March 2003. The dealerships vacated the property on or about June 18, 2001.

Under federal and state law persons displaced by the public taking of land may be entitled to payment for reasonable moving expenses.[1] The applicable federal regulation states that all claims for a relocation payment by tenants must be filed with the agency within 18 months of the date of displacement. For owners, a claim must be filed within 18 months of the date of displacement or the date of the final payment for the acquisition of real property, whichever is later. The regulation also provides that the deadline *shall* be waived by the agency for good cause. The HRA maintains that the dealerships are tenants and that the 18 month deadline for claims by tenants expired in December 2002.

Each dealership submitted relocation claims to the HRA. The Walser family did not. The first and second claim filings were submitted in 2001. A third claim filing was submitted on March 10, 2003 and was accepted for consideration by the HRA, even though it was not filed within 18 months of the dealerships vacating the property. In its final determination on the March 10 claims, the HRA stated that no additional claims could be submitted.

The parties are in disagreement as to the admissibility of two categories of evidence. The first is additional documentation for claims that were either timely submitted or accepted by the HRA. This documentation was not presented to the HRA at the time the claims were filed. Secondly, the dealerships seek to present new claims in this contested case proceeding that have not been filed with the agency.

In regard to the first issue the HRA points out that the federal regulations require any claim for a relocation payment to be supported by such documentation as may be reasonably required to support expenses that were incurred.[2] The agency suggests that this means all documentation must be submitted with the claim and that any alternative interpretation would provide no deadline at all for submitting documentation. The claimants point out however that the regulations also provide that after a displaced person submits a claim "[t]he claimant shall be promptly notified as to any additional documentation that is required to support the claim."[3] The claimant suggests that this language recognizes that documentation may be submitted after the initial claim. The dealerships note that the appeal procedures require an agency to consider "all pertinent justification and other materials submitted by the person, and all other available information that is needed to insure a fair and full review of the appeal."[4]

The HRA's suggested interpretation is contradicted by the regulation allowing filing of documentation after a claim is filed. Additionally, the agency's interpretation would also preclude submitting evidence at the appeal hearing beyond that filed by the displaced person with the original claim. This would seem to be contrary to the concept

of a *de novo* hearing where all evidence possessing probative value is considered, as envisioned by the Minnesota Court of Appeals.[5] It would also preclude consideration of "all available information" and hamper a fair and full review. The HRA's motion to exclude additional claim documentation other than that filed with or prior to the third claim filed in March of 2003 is denied.

At or immediately subsequent to the prehearing conference in this matter, the claimants indicated that they would seek to submit new claims which have not been formally submitted to the HRA. The HRA argues that its written determination that no further claims could be submitted after the third filing should be upheld since it was not appealed. However, the agency's unilateral determination that no further claims can be submitted is contrary to the regulation requiring it to waive a deadline for good cause. There does not appear to be any requirement that such a determination by the HRA must be separately appealed if the claimants disagree with it.

The claimants present three reasons why they should be permitted to submit new claims. First, they argue that one dealership, Walser Buick/Isuzu, did have an ownership interest in the property on which it was located just prior to the initiation of the condemnation proceedings by the HRA, but after the initiation of negotiations. This interest was transferred to the Walser family on August 11, 2000, apparently in order to simplify the condemnation proceeding. Walser Buick/Isuzu did receive a payment of $200,000 as a part of the March 6, 2003 settlement of the condemnation proceeding. Therefore, Walser argues that as an owner of the property it has 18 months from the date of final payment to file a claim, which would extend the deadline to August 6, 2004.

However, the record indicates that the parcel of land owned by Walser Buick/Isuzu was occupied not by the Buick dealership but by Motorwerks BMW. And it is not clear that the payment made to Walser Buick/Isuzu as a result of the March 6, 2003 settlement related to its land ownership since the settlement dealt not only with the condemnation but also with zoning and TIF litigation. In fact, the June 22, 2001 affidavit submitted to obtain disbursement of HRA payment for the land held by Hennepin County District Court to the Walsers, specifies that the claimants are lessees. The record also indicates that the claimants represented themselves to be tenants only, prior to September of 2003. Additionally, the operative date under the regulation for determining the beginning of the claim filing period is the date of displacement or the final payment, not, as suggested by the claimants, the beginning of negotiations. The dealerships were legally tenants on the date of displacement. The dealerships have not established that either has an ownership interest that would extend the deadline for filing a claim beyond 18 months after their displacement.

Secondly, the claimants argue that this is an appropriate situation for a reverse pierce of the corporate veil in which, for equitable reasons, a corporation and its owners are regarded as the same.[6] They suggest that the dealerships were operated as mere instrumentalities of the Walser family within the meaning of the case law. The Walser family are the sole shareholders of Walser sales and own 90% of Motorwerks BMW. Jack Walser is the chairman of both Walser Sales and Motorwerks BMW. They also assert that there is an element of fundamental unfairness if the family and the

dealerships are regarded separately. The dealerships point out that if they had been fee owners of the property rather than the Walser family, they would have until August 2004 to make a final claim. They suggest that treating the family and the dealerships the same is consistent with the purpose of the relocation legislation, which is to insure that persons displaced "are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole…"[7]

A significant difficulty with this argument is that the shareholders, the Walsers, have not asked that the corporate veils be pierced so that they can file relocation claims. In the case law cited by the claimants, where the corporate entity is sought to be set aside, a sole shareholder seeks to have himself and the corporation treated as one. Neither does this factual situation in this case match that of the case law where the corporations were merely facades for individual dealings.[8] A closely held corporation is not necessarily more likely to be subject to a piece of the corporate veil. Additionally, the record in this matter does not present strong equitable reasons to support ignoring the corporation. In the case law cited sole shareholders were faced with the loss of significant benefits, due to corporate ownership of an automobile. In this case, there is no element of injustice or fundamental unfairness where substantial benefits have already been paid.

The claimants also point out that the regulations specifically require the agency to waive a deadline "for good cause."[9] They suggest that the complexity of these claims, the minimal claim assistance provided by the HRA, as well as the delays in making claim determinations and providing payments to the dealerships, all justify a waiver of the 18 month period in which Walser had to make a complete claim for relocation benefits. The claimants argue that the HRA's consultant provided only a minimal amount of relocation advisory service and claim assistance to the dealerships.[10] They also assert that repeated requests for a determination on professional planning costs was not responded to by the HRA.[11] The claimants suggest that they have done their best to provide the information required to the HRA and to thoroughly document their claims. They argue that the HRA should not benefit from its own delays.

The dealerships have not established significant delay by the HRA, apart from conclusory allegations, nor have they explained how delay in 2001 or 2002 related to the submission of new claims in September of 2003. The HRA made the services of a relocation adviser available to the claimants and has paid over $600,000 in benefits to the claimants to date. It has explained any denials in writing and eventually responded to the professional planning costs inquiry. It appears that the claimants have only recently realized that some new claims may exist. However, the nature and amount of those claims are apparently still inchoate. There does not appear to be a good reason why the claims could have been at least submitted on March 19, 2003. If one purpose of the deadline is to ensure that relevant documents and recollections are not lost due to claims being filed long after the events in question, then the new claims would violate the reason for the regulation.

Finally, the claimants also assert that the HRA has waived any 18 month limitation period by accepting a third claim on March 10, 2003. It is HRA's position that the claim submission deadline for the dealerships was December 20, 2002. The claimants state that as late as April 30, 2003, the HRA was still accepting supplemental claim documentation in support of a claim by the dealerships. However, waiver is the intentional relinquishment of a known right.[12] In this case, although the HRA accepted a claim more than 18 months after the displacement of the claimants, it made it clear in its claim determination on the third filing that it would accept no further claims. This is a clear statement that it intended to insist upon what the law affords it.

Therefore, evidence in support of new claims must be excluded from the hearing in this matter, since the 18 months applicable to the claimants as tenants has expired and good cause has not been established to waive the deadline.

**G.A.B.**

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[1] Minn. Stat. § § 117.50-117.56.
[2] 49 CFR § 24.207(a).
[3] 49 CFR § 24.207(b).
[4] 49 CFR § 24.10(f).
[5] In Re James Brothers Furniture, Inc., 642 N.W. 2d 91 (Minn. Ct. App. 2002).
[6] Roepke v. Western National Mutual Insurance Company, 302 N.W. 2d 350 (Minn. 1981); Miller and Schroeder v. Gearman, 413 N.W. 2d 194, 196-8 (Minn. Ct. App. 1987).
[7] 49 CFR 24.1(b).
[8] See also, Victoria Elevator Co., 283 N.W. 2d 509, 512 (Minn. 1979).
[9] 49 CFR 24.207(d).
[10] Kleckner affidavit ¶ 5.
[11] Schnitker affidavit ¶'s 7 through 17.
[12] Seavey v. Erickson, 69 N.W. 2d 889, 895 (Minn. 1955).